

State Assumption of the CWA Section 404 Program
CWA Sections 404(g) & (h) Paraphrased &
Cross-referenced to 40 CFR Part 233

CWA Section 404(g)

1. - Allows the Governor of any State desiring to administer its own individual & general permit program for the discharge of dredged or fill material into navigable waters.
- Provides for the Governor to submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or an interstate compact.
- Governor shall submit a statement from the attorney general that the laws of the State provide adequate authority to carry out the described program.
[40 CFR § 233.10¹; 40 CFR § 233.11²; 40 CFR § 233.12³; & 40 CFR § 233.15⁴]
2. No later than 10 days after receipt, the Administrator must provide copies of the State's program and attorney general's statement to the Secretary of the Army and Secretary of the Interior, through the Director of the US FWS.
[40 CFR § 233.15(d)]
3. No later than 19 days after receipt by the Administrator of the State's program and attorney general's statement, the Secretary of the Army and Secretary of the Interior shall submit any comments to the Administrator in writing.
[40 CFR § 233.15(f)]

CWA Section 404(h)

1. No later than 120 days after receipt by the Administrator of the State's program and attorney general's statement, the Administrator shall determine if the State has the following authority with respect to the issuance of 404 program permits:
[40 CFR § 233.15]
 - a. To issue permits which –
 - i. Comply with 404(b)(1) Guidelines & Sections 307 & 403
[40 CFR § 233.23(a)⁵]
 - ii. Are for fixed terms not exceeding five years, and
[40 CFR § 233.23(b)]
 - iii. Can be terminated or modified for cause
 1. Permit condition violation,
 2. Obtaining permit by misrepresentation, or failure to fully disclose all relevant facts, and
 3. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
[40 CFR § 233.36⁶]
 - b. Equal to or more protective than Section 308.

¹ 40 CFR § 233.10 Elements of a program submission.

² 40 CFR § 233.11 Program description

³ 40 CFR § 233.12 Attorney General's statement

⁴ 40 CFR § 233.15 Procedures for approving State programs

⁵ 40 CFR § 233.23 Permit conditions

⁶ 40 CFR § 233.36 Modification, suspension or revocation of permits

State 404 Program Assumption

- c. Assure the public, and any other affected State, receive notice of each application for a permit and provide an opportunity for a public hearing before a ruling on such application.
[40 CFR § 233.50⁷]
 - d. Assure that the Administrator receives notice of each application for a permit.
[40 CFR § 233.50]
 - e. Assure that any affected State that their submitted comments which are not accepted by the permitting State, the affected State will be notified in writing of the failure and the reasons for doing so.
[40 CFR § 233.31⁸; 40 CFR § 233.50(d)]
 - f. Assure the Secretary of the Army, after consultation with the Secretary of the Coast Guard, that no permit will substantially impair the operation, anchorage, and navigation of any navigable water.
[40 CFR § 233.20(d)⁹]
 - g. Abate violations of the permit or permit program.
-including civil, criminal penalties and other ways & means of enforcement
[40 CFR §§ 233.40 & .41¹⁰]
 - h. Assure continued coordination with Federal & Federal-State water-related planning and review processes.
[40 CFR § 233.31(b)]
2. If the Administrator determines that such State –
 - a. -Has the authority in paragraph (1), the Administrator shall approve the program
-Notify the State & Secretary of the Army
-The Secretary of the Army shall suspend the issuance of permits; OR
[40 CFR §§ 233.15(g) & (h)]
 - b. -Does not have the authority in paragraph (1), the Administrator shall notify the State and
-Describe the revisions or modifications necessary so that the State may resubmit such program.
[40 CFR § 233.15(i)]
 3. -If the Administrator does not make a determination within 120 days after the date of receipt of such program, such program shall be deemed approved and
-The Secretary of the Army shall suspend the issuance of permits.
 4. After the Secretary of the Army receives notification from the Administrator that a State permit program has been approved...
-the Secretary of the Army shall transfer any pending applications to the State.
[40 CFR § 233.15(h)]
 5. After the Secretary of the Army receives notification from the Administrator that a State permit program has been approved that such State intends to administer and enforce the terms and conditions of general permits issued by the Secretary of the Army....
-The Secretary of the Army shall suspend the administration and enforcement of general permits.
[40 CFR § 233.15(h)]

⁷ 40 CFR § 233.50 Review of and objection to State permits

⁸ 40 CFR § 233.31 Coordination requirements

⁹ 40 CFR § 233.20 Prohibitions

¹⁰ 40 CFR § 233.40 Requirements for compliance evaluation programs

40 CFR § 233.41 Requirements for enforcement authority

40 CFR Part 233: 404 State Program Regulations

Subpart A_General

- § 233.1 Purpose and scope
- § 233.2 Definitions
- § 233.3 Confidentiality of information
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Subpart B_Program Approval

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- § 233.12 Attorney General's statement
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- § 233.21 General permits
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Subpart E_Compliance Evaluation and Enforcement

- § 233.40 Requirements for compliance evaluation programs
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Subpart F_Federal Oversight

- § 233.50 Review of and objection to State permits
- § 233.51 Waiver of review
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- § 233.53 Withdrawal of program approval

Subpart G_Eligible Indian Tribes

- § 233.60 Requirements for eligibility
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Subpart H_Approved State Programs

- § 233.70 Michigan
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**§ 233.50 Review of and objection to State permits
EPA's (WSRS) Responsibilities**

Receipt of PN Day 0	§ 233.50 (a)	EPA's (WSRS) Responsibility Regional Administrator receives a copy of the State's public notice, draft General permit, or other information need for review.
Day 10	(b)	RA shall provide copy of each PN, draft general permit, and other information needed (PN) for review to the Corps, FWS, and NMFS
15 Days after receipt		RA receives Corps, FWS, and NMFS notification that they want to comment
50 Days after receipt		RA receives Corps, FWS, and NMFS comments
Day 30	(c)	(1) RA may request Director to transmit supplemental information determined necessary for review.
	(d)	(2) If RA intends to comment upon, object to, or make recommendations with respect to a permit application, draft general permit, or the Director's failure to accept recommendations of an affect State (see section 233.31), the RA shall notify the Director of their intent; OR (3) RA may notify Director there is no comment but reserves the right to object within 90 days of receipt, based on any new information from the comment period or at a hearing.
Day 90	(e)	If RA has given notice within 30 days of receipt, the RA shall submit to the Director a: (1) written statement of their comments, objections, or recommendations; (2) the reasons for the comments, objections, or recommendations; and (3) the actions that must be taken by the Director to eliminate any objections. RA's objection shall be based on: (a) Subject of an interstate dispute under section 233.31(a) and/or (b) Outside the requirements of the Act, these regulations, or the 404(b)(1) Guidelines. (4) The RA shall make available upon request a copy of any comment, objection, or recommendation on a permit application to the permit applicant or to the public.